FILED
APR 2 4 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-1039 VIDE 06-1294

In the Supreme Court of the United States

THE ESTATE OF ROGER ROXAS AND
THE GOLDEN BUDHA CORPORATION,
Petitioners,

v.

MARIANO J. PIMENTEL, on behalf of himself
and all other persons similarly situated,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONERS' REPLY TO PIMENTEL

DANIEL C. CATHCART
Counsel of Record
LADELL HULET MUHLESTEIN
MAGAÑA, CATHCART & McCARTHY
1801 AVENUE OF THE STARS, SUITE 600
LOS ANGELES, CA 90067-5801
(310) 553-6630
(310) 407-2295 FAX

Counsel for Petitioners

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

RULE 29.6 STATEMENT

Defendants refer to and by this reference incorporate the corporate disclosure statement contained in their Petition for Writ of Certiorari.

- - -

TABLE OF CONTENTS

Rule 29.6 Statement i

Table of Contents ii

Table of Authorities iii

Introduction 1

I. No Court May Proceed Without Jurisdiction Of The Matter And The Parties Before It 1

A. A Federal Court May Not Control Estate Assets 1

B. A Party Against Whom a Court Has Ruled is Not Barred From Asserting that the Court Had No Jurisdiction, and May Do So at any Stage of the Proceeding 5

C. The Estate is an Indispensable Party to this Action to Distribute Its Assets 6

D. General Judgment Creditors Lack the Adversity Necessary to Meet the Interpleader Statute's Jurisdictional Requirements 7

E. The Pimentel Claimants' Judgment is Deemed Satisfied by Operation of Law. The Rights Represented by the Judgment Cannot Serve as the Basis of a Claim 8

II. The Court of Appeals Was Obligated To Consider Petitioners' Assertion On Appeal That The District Court Lacked Jurisdiction, But Refused To Do So . 8

Conclusion 9

TABLE OF AUTHORITIES

Byers v. McAuley, 149 U.S. 608, 13 S.Ct. 906 (1893) . 1, 4, 7

Cadet v. Bulger, 377 F.3d 1173 (11th Cir. 2004) 6

Kontrick v. Ryan, 540 U.S. 443, 124 S.Ct. 906 (2004) 5

Markham v. Allen, 326 U.S. 490, 66 S.Ct. 296 (1946) 2

Marshall v. Marshall, 547 U.S. 293,
126 S.Ct. 1735 (2006) 2, 5

INTRODUCTION

Petitioners submit that the judgment of the district court was a usurpation of jurisdiction not granted the federal courts. The decision of the Ninth Circuit Court of Appeals affirming the district court's judgment was erroneous and so deficient in substance as to deprive Petitioners of their right of appeal. The attention of this Court is necessary to correct these errors and resolve important issues as to the scope and applicability of the probate exception to federal court jurisdiction and the adversity requirements of the federal interpleader statute.

I. NO COURT MAY PROCEED WITHOUT JURISDICTION OF THE MATTER AND THE PARTIES BEFORE IT.

A. A Federal Court May Not Control Estate Assets.

In their Opposition Brief the Pimentel claimants correctly urge that they are entitled "to establish their claims" in federal court. (Pimentel Claimants' Brief in Opposition (hereinafter "P. Opp. Brf.," p. 22.) However, while the courts hold that parties may obtain a judgment in federal court, they also hold that such a judgment cannot be satisfied by distribution of Estate assets by a federal court. This Court declared in *Byers v. McAuley,* 149 U.S. 608, 620, 13 S.Ct. 906 (1893) (emphasis added): "A [claimant] . . . may establish a debt against the estate. [Citations omitted.] But the debt thus established must take its place and share of the estate as administered by the probate court; and it cannot be enforced by process directly against the property of the decedent."

The Pimentel claimants argue that this case is not subject to the probate exception because the Estate asset was deposited with the district court in the course of this interpleader action

before a probate proceeding was opened. (P. Opp. Brf. p. 23.) The Pimentel claimants rely on *Markham v. Allen,* 326 U.S. 490, 494, 66 S.Ct. 296 (1946) and *Marshall v. Marshall,* 547 U.S. 293, 126 S.Ct. 1735 (2006). Neither case supports their position.

The *Markham* Court's holding was not a deviation from the earlier Supreme Court cases cited by Petitioners. This Court declared that the scope of the probate exception has been established by a "long series of decisions of this Court." *Id.* at 494. In Markham this Court simply acknowledged federal court jurisdiction to adjudicate rights to probate property so long as the judgment does not interfere with the state courts' possession of the property. *Id.* Significantly, in *Markham* this Court suggested that it would have ruled differently, as this Court should, had the final order effected distribution of the assets, instead of merely determining the claimants' rights. The Court specifically noted that the effect of the district court judgment was merely to decree petitioner's rights and leave undisturbed the orderly administration of the estate in the state probate court. *Id.*

In *Marshall v. Marshall,* this Court recognized the probate exception to federal jurisdiction. *Marshall v. Marshall,* 547 U.S. 293, 126 S.Ct.1735, 1746 (2006). The facts of the *Marshall* case are so different from the facts of this case, that it provides no guidance here. In the *Marshall* case: (1) the action was for a widely recognized tort; (2) the action was an in personam action; (3) the action did not seek to reach a res; (4) the action concerned fraud and duress which is conduct trial courts often address and as to which probate courts have no specific proficiency in handling; (5) the federal court had broad jurisdiction under the bankruptcy statute; and (6) under Texas law probate courts do not have exclusive jurisdiction of tort claims respecting interference with gift or inheritance.

Marshall, supra, at 1746, 1748-1750. The Court held that an in personam claim for interference with gift or inheritance can be heard in a bankruptcy proceeding. The Court noted that the claim fell far outside the bounds of the probate exception described in *Markham* and declined to consider the scope of the probate exception to federal bankruptcy jurisdiction. *Id.* at 1746. Petitioners agree that the probate exception would not apply on the facts of the *Marshall* case. The instant interpleader action is fundamentally different in nature from, and goes beyond, the *Markham* case. Its unique purpose is to consider competing claims, such as the Pimentel claimants' judgment, against assets of the Estate for distribution of the fund. It is akin to the distribution judgment specifically distinguished by the *Markham* Court.

The Pimentel claimants point to language prohibiting federal court "control of the property in the custody of the state court." (*Markham* at 494, cited at P. Opp. Brf. pp. 22-23.) In *Marshall* this Court declared that this language in *Markham* proscribed "disturbing" or "affecting" the "possession of property" in the custody of a state court. *Marshall, supra,* at 1748. The language referring to the custody of probate courts is to be expected inasmuch as there were on-going probate proceedings in those cases. However, nothing in the cases suggests that application of the probate exception turns on which court is first to take possession of the res, on an unseemly race to the res.[1] Instead, its application turns whether the court's judgment controls, disturbs or affects Estate

---

[1] The history of efforts to open probate proceedings with respect to other Marcos-related assets is irrelevant because if this action were dismissed for lack of jurisdiction and this Court thereby divested of its possession of the fund, there would be no impediment to the commencement of a probate proceeding relative to this Marcos-related asset.

property. The Pimentel claimants argue that the fund belongs in the Marcos Estate, of which a probate court would have jurisdiction and could take possession upon the commencement of a probate proceeding. The reason for focusing on the effect on the Estate property is demonstrated by this case, where there was no opportunity to commence a probate proceeding due to the preemptive actions of a crusading district court judge who quickly secured possession of the Merrill Lynch account to the district court[2] in a questionable and unorthodox manner.[3] (ROP Opp. Brf.)

In *Byers v. McAuley, supra,* 149 U.S. at 620 the Court foresaw such a circular argument as the Pimentel claimants make here - that possession of the res by the federal court precludes the probate exception and thereby, in effect, creates federal jurisdiction. The Court held that a federal court will not entertain an action if the relief requested (here, distribution of estate assets) might have the practical effect of drawing possession of a probate res to the federal court. Because the federal court did not have jurisdiction of the administration of estates, the Court noted, the federal court cannot by entertaining jurisdiction of a suit against the administrator "draw to itself the . . . possession of the estate." *Id.* at 618-619.

---

[2] This is not the only attempt the district court judge made to obtain possession of alleged Estate assets. See, the discussion and citations set forth in the Brief in Opposition of the Philippine Government-related Respondents (hereinafter "ROP Opp. Brf."), at p. 5, describing the district court's attempt to order Swiss banks to transfer assets to the district court and to commence an interpleader action.

[3] The actions of the district court in soliciting the interpleader case were so egregious as to form the basis of a motion by the Philippine Government claimants to recuse the judge.

The Court's holding that federal courts may not control Estate assets remains unchanged. Just last year, in the *Marshall* case the Court specifically noted that the subject action did not seek to reach a probate res. *Marshall, supra,* at 1748.

The fund is alleged by the Pimentel claimants to be a probate res; therefore, it falls under the umbrella of probate jurisdiction regardless of whether a formal probate proceeding has been opened. A federal court may not invade that most basic function of probate jurisdiction - control of probate assets - by taking control of an Estate asset and claim that it has therefore defeated probate jurisdiction because of its possession of the res.

B. A Party Against Whom a Court Has Ruled is Not Barred From Asserting that the Court Had No Jurisdiction, and May Do So at any Stage of the Proceeding.

As obvious as this proposition is, the Pimentel claimants argue that Petitioners, having lost below, have no right to contest the jurisdiction of the Court. (P. Opp. Brf. p. 26.) The Pimentel claimants actually declare, "These jurisdictional issues are irrelevant as they apply to the Golden Budha/Roxas petitioners, which have failed to prove [their] claim." *Id.* The Pimentel claimants also argue that Petitioners' assertions that the Court lacks jurisdiction based on the absence of an indispensable party and for failure of the Pimentel claimants to meet the jurisdictional requirements of the interpleader statute were not raised below and are therefore barred. (P. Opp. Brf. pp. 16, n. 14; 28, n.15.) Lack of jurisdiction may be raised at any stage of the proceeding. *Kontrick v. Ryan,* 540 U.S. 443, 455, 124 S.Ct. 906 (2004), citing and describing case in which a judgment loser successfully raised lack of jurisdiction for the first time before the Supreme Court. Furthermore,

federal courts "are obligated to inquire into subject matter-jurisdiction *sua sponte* whenever it may be lacking. *Cadet v. Bulger,* 377 F.3d 1173, 1179 (11th Cir. 2004).

The outcome of the Court's ruling is not moot as to these Petitioners. If the Court had no jurisdiction to award the fund to the Pimentel claimants, these Petitioners live to litigate another day. Petitioners' offered substantial evidence that the subject account derived from the treasure stolen from them by Marcos, all of which was excluded by the trial court on the basis of erroneous applications of the rules of evidence.[4] The Ninth Circuit never examined these erroneous rulings. This evidence can be reintroduced in a subsequent proceeding or in a probate proceeding.

C. The Estate is an Indispensable Party to this Action to Distribute Its Assets.

Contrary to the Pimentel claimants claims, the Estate was not a party to this action. An examination of the docket sheet in this case and the complaint fails to disclose that whoever may have been served was an authorized, court appointed personal representative of the Estate of Marcos.

The Pimentel claimants claim that the Estate is not an indispensable party. They claim, it is clear that a judgment awarding the entirety of the fund to them caused minimal prejudice to the Estate. The Estate is not an ordinary party. In resisting the Pimentel claimant's claim to the assets, the Estate

---

[4] *See* detailed discussion of the scope of the evidence offered and the erroneous, wholesale exclusion of Petitioners' evidence at pp. 23 - 27 of the Petition and the earlier discussion in Petitioners' Opening Brief to the Ninth Circuit Court of Appeals.

would protect the interests of all other claimants to the Estate assets. Proceeding in the absence of the Estate in an action in which notice has not been afforded to potential claimants allows for "cherry-picking" of the assets by the claimant with the tallest ladder, to the detriment of the remaining claimants who are not party to the proceeding. A claim, like the Pimentel claimants', established in federal court, "must take its place and share of the estate as administered by the probate court ; and it cannot be enforced by process directly against the property of the decedent." *Byers, supra,* at 620.

D. General Judgment Creditors Lack the Adversity Necessary to Meet the Interpleader Statute's Jurisdictional Requirements.

The Pimentel claimants assert that they sued Merrill Lynch for the subject account on the basis of a judgment against Marcos and reiterated their claim in this interpleader action. (P. Opp. Brf. p. 28.) The Pimentel claimants are general judgement creditors and lack the adversity required for jurisdiction under the interpleader statute. The centuries of common law recognizing the right of judgment creditors to collect against debtors is wholly irrelevant here. The interpleader procedure is statutory. Participants must comply with the terms of the statute to obtain the statutory remedy. Otherwise, they may pursue the common law remedies to which the Pimentel claimants refer.

The Pimentel claimants assert that "[n]o case holds that a judgment creditor cannot be a proper claimant to an interpleaded fund . . . ." (P. Opp. Brf. p. 29.) They are wrong. See the cases cited by Petitioners at pages 18 - 23 of the Petition and at pages 19 - 23 of Petitioners opening brief to the Ninth Circuit.

E. The Pimentel Claimants' Judgment is Deemed Satisfied by Operation of Law. The Rights Represented by the Judgment Cannot Serve as the Basis of a Claim.

Exhibit H attached to the Petition for Writ of Certiorari sets forth the critical dates which establish that the statute of limitations on judgments has run on the Pimentel plaintiffs and under applicable law those parties are conclusively presumed to have had their judgment against the Marcos estate to have been paid in full. There are no exceptions, nor does the statute allow extensions of the statute of limitations unless an application for an extension is filed BEFORE the expiration of the ten years. The Pimentel plaintiffs applied for an extension AFTER the time expired. This is not permitted. An appeal is pending in the Ninth Circuit bearing docket # 06-16301.

The Pimentel claimants fail to discuss this determinative issue in their Brief In Opposition. They have no way out.

II. THE COURT OF APPEALS WAS OBLIGATED TO CONSIDER PETITIONERS' ASSERTION ON APPEAL THAT THE DISTRICT COURT LACKED JURISDICTION, BUT REFUSED TO DO SO.

In response to Petitioners' argument that they were denied any meaningful appeal, the Pimentel claimants characterized as "well reasoned" the Ninth Circuit's Opinion, which did not address any of the foundational jurisdictional issues pressed by Petitioners and devoted only its last two paragraphs to Petitioners' issues, without offering any analysis or citing any authority. (P. Opp. Brf. p. 29. "Having disposed of . . . [P]etitioners' claims . . .," the Pimentel claimants assert, the Ninth Circuit was not obligated to address Petitioners'

arguments. (P. Opp. Brf. p. 30.) The right of appeal means nothing if it is available only to winners who do not need it. The Court of Appeals was obligated to consider and rule upon Petitioners' jurisdictional arguments.

Petitioners were entitled to consideration of their assertions of error on issues which logically precede the district court's ruling distributing the fund to the Pimentel claimants because if the fund could not be distributed to the Pimentel claimants, claims to the fund could be litigated again in other fora. Whether the court had subject-matter jurisdiction of the action, whether the Pimentel claim failed for lack of adversity, and whether evidence that the fund derived from property stolen by Marcos precluded its use to satisfy claims against Marcos all must logically precede any order to distribute the fund. The failure of the Court of Appeals to address any of them deprived Petitioners of a meaningful right of appeal.

CONCLUSION

Most, if not all, of the problems and issues disappear if this matter is handled in a probate proceeding. Problems such as sovereign immunity, indispensable parties, and interest in the fund, adversity and jurisdiction should not arise. They arise here because the trial court went way beyond the finding of estate property, to the handling of claims against an estate, determining the priority of claims and finally the distribution of estate assets.

Petitioners pray that their Petition for Writ of Certiorari be granted and the judgment in the district court be vacated and reversed as exceeding the jurisdiction of the federal courts, or in the alternative, that the Opinion of the Ninth Circuit be reversed and the Ninth Circuit be directed by this court to enter an Opinion on the issues raised by Petitioners consistent with

the decisions of the United States Supreme Court.

Respectfully submitted,

MAGAÑA CATHCART & MCCARTHY
DANIEL C. CATHCART
LADELL HULET MUHLESTEIN

Attorneys for Petitioners The Estate of Roger Roxas and The Golden Budha Corporation